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LAMBERT *v.* PHILLIPS & SON.

June 10, 1909.

[64 S. E. 945.]

1. Principal and Agent (§ 136*)—Liabilities to Third Persons—Action in Principal's Name—Agent's Liability.—If defendant was merely the agent of the owner to supervise improvements upon property, and fully disclosed his relation to plaintiff, he would not be liable for work done and materials furnished by plaintiff, unless credit was given to him expressly and exclusively, so that it was error to instruct that the jury should determine the relation between plaintiff and defendant upon all the evidence, and if defendant was not an independent contractor, but an agent of the owner, and fully disclosed his relationship, and credit was given to the owner, and not to defendant, he was not liable.

[Ed. Note.—For other cases, see Principal and Agent, Cent. Dig. §§ 476-491; Dec. Dig. § 136.* 1 Va.-W. Va. Enc. Dig. 269.]

2. Principal and Agent (§ 133*)—Agent's Liability—Contracts.—That defendant was an independent contractor in making improvements on property, so as to be responsible to employees and others for injuries resulting from his negligence, was not conclusive of whether he was liable for materials furnished in doing the work, but was only a fact to be considered in determining whether credit was given to him or to the owner; that being the criterion of liability for the materials.

[Ed. Note.—For other cases, see Principal and Agent, Dec. Dig. § 133.* 1 Va.-W. Va. Enc. Dig. 269.]

3. Trial (§ 244*)—Instructions—Undue Prominence of Particular Matters.—In an action for work done and materials furnished in making improvements on property which defendant was superintending, instructions which specifically called the jury's attention to whether defendant was an independent contractor and only slightly referred to the question of whether credit was given to defendant or to the owner, which was the final criterion of liability, were misleading, as giving undue importance to the question whether defendant was an independent contractor, which was but a circumstance for consideration in determining to whom credit was given.

[Ed. Note.—For other cases, see trial, Dec. Dig. § 244.* 7 Va.-W. Va. Enc. Dig. 723.]

Judgment reversed. All the judges concur.

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.